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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,059	10/08/2003	Dave DeWaard	P114153	6499

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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/682,059

Applicant(s)

DEWAARD, DAVE

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 01/07/05 have been fully considered but they are not persuasive. It is noted that Exhibits A and B which are discussed in the Arguments have not been presented. The Applicant argues that it can be appreciated that "there is a *potential* for communication with a cleaning solution to contaminate the milk supply via entering through the cleaning solution inlet 12 {sic}, passing through the supplemental passageway 50, entering into the lateral air gap 56, and then traveling inward toward the milk inlet 24 and passing in the opposite direction through the milk bore 32". This statement is respectfully disagreed with. Basic fluid dynamics must be considered when discussing the flow of fluid with respect to the Pereira reference, that being, fluid will flow through the path of least resistance. As per the Applicant's arguments, if fluid were to pass through the supplemental passageway, enter into the lateral air gap, it is clearly seen in Figure 4 that the lateral air gap exits to ambient atmosphere as viewed in relation to Figure 1. As such, it is inconsistent that a fluid when passing out of air gap 56 would then travel inwards against surface forces of 14-29 psi (column 5, lines 8-10) so as to enter the back side of slide plate 16 so as to contaminate the second milk passage. The rejection stands.

Drawings

2. The drawing corrections were received on 01/07/05. These drawings are approved.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 6-9, 11-19 and 23-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Pereira et al., US Patent 5,850,845 (Pereira).

Pereira discloses *inter alia* a valve assembly and an inherent method of use having a relieve slot (56), a first milk passage (24) a second milk passage (28), a cleaning fluid passage (22), a first transverse slide (16), a milk channel (32) and a cleaning fluid channel (38), an actuator portion (6), wherein when the valve element is in transition from the milking position to the cleaning position, there is no fluid path between the cleaning fluid passage and the second milk passage (reference discussion above in the Response to Arguments and the mechanical disclosure as shown in Figure 2)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3, 5, 10 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira et al., US Patent 5,850,845 (Pereira).

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Regarding claims 2 and 20, Pereira discloses the invention substantially as claimed. However, Pereira does not disclose the cleaning fluid passage being positioned between the actuator and the first milk passage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the actuator so as to have the cleaning fluid passage positioned between the actuator and the first milk passage, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claims 5, 10 and 22, Pereira discloses the invention substantially as claimed. However, Pereira does not disclose the relief slot being located on the housing section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the relief slot on the housing section, since it has been held that rearranging the parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss



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